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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911

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EXAMINER

PIZIALI, ANDREW T

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,459

Applicant(s)

LEVINE ET AL.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,9-12,15-22,24,28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-8,13,14,23,25-27 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/25/04 & 6/14/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-14 and 23-30, in the reply filed on 10/21/2005 is acknowledged. Applicant's election without traverse of Species 1 from Species Groups I-IV and Species 2 from Species Group V in the reply filed on 10/21/2005 is also acknowledged. The applicant indicated that claims 1, 2, 4, 7-11, 23 and 25-27 are pending after election, but in accordance with the elected species the actual claims pending are 1, 2, 4, 6-8, 13-14, 23, 25-27 and 30. Claims 3, 5, 9-12, 15-22, 24 and 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and/or species.

Drawings

2. Figures 1 (woven fabric incorporating no flattened filaments), 3 (hydroentangling system described in USPN 6,163,943), 4A-6 (conventional fabrics prior to modification in accordance to the present invention), 8 (conventional hydroentangling machine), and 9 (conventional spiral link type fabric disclosed in USPN 4,345,730) should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 3,110,905 to Rhodes.

Regarding claims 1-2, 4, 6, 23 and 25-27, Rhodes discloses a fabric comprising flattened filaments (see entire document including column 1, line 71 through column 2, line 50). Rhodes does not specifically mention using the fabric as a hydroentangling support, but it appears that the fabric is capable of being used as a hydroentangling support. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 2 and 4, Rhodes discloses that at least one direction (CD or MD) of filaments may include non-flattened filaments (51) (see Figure 1).

Regarding claim 6, Rhodes discloses that the flattened filaments may include a combination of the MD and CD filaments (column 1, line 71 through column 2, line 50).

Regarding claims 23 and 25-27, Rhodes discloses that the flattened filaments may be spun, extruded, or shaped into a flattened or rectangular shape (column 2, lines 33-50) and then woven (column 2, lines 14-16). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed

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article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show obvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

5. Claims 1-2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,595,627 to Steinman.

Regarding claims 1-2, 4, 6, 23 and 25-27, Steinman discloses a fabric comprising flattened filaments (see entire document including column 1, lines 52-66). Steinman does not specifically mention using the fabric as a hydroentangling support, but it appears that the fabric is capable of being used as a hydroentangling support.

Regarding claims 2 and 4, Steinman discloses that at least one direction (CD or MD) of filaments may include non-flattened filaments (column 1, lines 52-66, claim 1, and Figure 1).

Regarding claim 6, Steinman discloses that the flattened filaments may include a combination of the MD and CD filaments (see claim 1).

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Regarding claims 23 and 25-27, Steinman discloses that the filaments may be slitted into a flattened or rectangular shape and then woven (column 1, lines 52-66). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

6. Claims 1-2, 4, 6, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,883,022 to Elsener.

Regarding claims 1-2, 4, 6, 23 and 25-27, Elsener discloses a fabric comprising flattened filaments (see entire document including column 3, lines 40-47). Elsener does not specifically mention using the fabric as a hydroentangling support, but it appears that the fabric is capable of being used as a hydroentangling support.

Regarding claims 2 and 4, Elsener discloses that at least one direction (CD or MD) of filaments may include non-flattened filaments (column 3, lines 40-47).

Regarding claim 6, Elsener discloses that the flattened filaments may include a combination of the MD and CD filaments (column 3, lines 40-47).

Regarding claims 23 and 25-27, Elsener discloses that the filaments of the fibers may be rectangular (flattened) prior to weaving the fabric (column 3, lines 40-47). Absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

7. Claims 1-2, 4, 6-8, 13, 23 and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,498,468 to Blaney.

Regarding claims 1-2, 4, 6-8, 13, 23 and 25-27, Blaney discloses a fabric comprising flattened filaments (see entire document including column 5, lines 10-19, column 6, lines 33-37,

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column 10, lines 1-21 and lines 49-60, and Figures 4, 6, 8 and 10). Blaney does not specifically mention using the fabric as a hydroentangling support, but it appears that the fabric is capable of being used as a hydroentangling support.

Regarding claims 2 and 4, Blaney discloses that at least one direction (CD or MD) of filaments may include one or more secondary filaments (column 6, lines 4-6).

Regarding claim 6, Blaney discloses that the flattened filaments may include a combination of the MD and CD filaments (column 6, lines 33-37 and column 9, line 57 through column 10, line 21).

Regarding claims 7 and 8, Blaney discloses that the fabric may be a double layer fabric comprising a woven layer and a nonwoven layer wherein the flattened filaments of the woven layer are incorporated only in the woven layer (column 6, lines 33-37). Regarding the claimed use of the woven layer as the wear side layer, it is submitted that woven layer is capable of being used as the wear side layer.

Regarding claim 13, Blaney discloses that fabric maintains permeability (column 1, lines 19-28). Considering that the fabric disclosed by Blaney is substantially identical to the claimed fabric (permeable woven fabric comprising flattened filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8 and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or

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substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claims 23 and 25-27, Blaney discloses that the flattened filaments may be calendered and then woven or the fabric may be woven and then the fabric can be calendered (column 9, line 57 through column 10, line 21).

Regarding claim 27, Blaney does not appear to mention calendaring just one side of the fabric, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

8. Claims 1, 6, 13-14, 23, 25-27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,345,730 to Leuvelink.

Regarding claims 1-2, 4, 6-8, 13, 23 and 25-27, Leuvelink discloses a fabric comprising flattened filaments (see entire document including column 5, lines 19-23). Leuvelink does not appear to specifically mention using the fabric as a hydroentangling support, but it appears that the fabric is capable of being used as a hydroentangling support.

Regarding claim 6, Leuvelink discloses that the flattened filaments may include a combination of the MD and CD filaments (column 5, lines 19-23 and Figure 7).

Regarding claim 13, Leuvelink does not specifically mention the permeability of the fabric, but considering that the fabric disclosed by Leuvelink is substantially identical to the

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claimed fabric (spiral link fabric comprising flattened filaments), and considering that the applicant discloses that such a fabric inherently possesses the claimed permeability (see page 11, lines 8 and 9 of the current specification), it appears that the fabric inherently possesses the claimed permeability.

Regarding claims 14 and 30, Leuvelink discloses that the fabric may be a spiral link type fabric (see Figure 7).

Regarding claims 23 and 25-27, Leuvelink does not specifically mention how or when in the process the filaments are flattened, but absent a showing to the contrary, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article because the end result is a fabric comprising flattened filaments.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,498,468 to Blaney (as applied to claims 1-2, 4, 6-8, 13, 23 and 25-27 above).

Blaney discloses that fabric maintains permeability (column 1, lines 19-28). In the event that it is shown that the fabric does not inherently possess the claimed permeability, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the permeability of the fabric because it is understood by one of ordinary skill in the art that

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the permeability determines the rate of gas or liquid flow through the fabric, because some applications require higher permeability, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Conclusion

11. The following patents are cited to further show the state of the art with respect to a fabric comprising flattened filaments:

USPN 6,790,796 to Smith et al.

USPN 3,915,202 to Curtis et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

gpb 11/10/05
ANDREW T. PIZIALI
PATENT EXAMINER